

L. Lebowitz



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** AGEMA Infrared Systems

**File:** B-240961

**Date:** December 28, 1990

Paul F. Khoury, Esq., Wiley, Rein & Fielding, for the protester.  
S.J. Evans, National Aeronautics and Space Administration, for the agency.  
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Proposed sole-source award under the authority of 10 U.S.C. § 2304(c)(1)(1988) is not objectionable where the agency reasonably determined that only one source was available to supply the required equipment, and protester, who submitted descriptive literature for review and evaluation by the agency in response to a notice published in the Commerce Business Daily, failed to establish it had current equipment which could meet the agency's requirements.

### DECISION

AGEMA Infrared Systems protests the proposed sole-source award of a contract to Inframetrics, Inc., under request for proposals (RFP) No. 13-SSC-P-90-9, issued by the National Aeronautics and Space Administration (NASA) for eight Inframetrics Model 700 thermal imagers in support of NASA's Shuttle Thermal Imager (STI) Program at the Kennedy Space Center (KSC), Florida. AGEMA argues that NASA improperly determined that Inframetrics was the only responsible source capable of meeting the agency's needs and that the sole-source restriction violates the requirement for full and open competition.

We deny the protest.

Thermal imagers, or radiometers, are devices used to detect and measure, in wavelengths, infrared radiation, i.e., thermal radiation or heat. The data collected by the thermal imagers

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is displayed on a video monitor for analysis and determination of an object's surface temperatures.

The record shows that the six operational Inframetrics Model 600 thermal imagers at KSC (previously procured by NASA on a sole-source basis from Inframetrics in accordance with statutory and regulatory requirements) are used by NASA to measure the surface temperatures of the shuttle's external tank, orbiter, and solid rocket boosters during pre-launch and launch operations of the shuttle and provide NASA with the capability of remote real-time thermal infrared imaging (as the actual events take place) in support of NASA's efforts to identify and locate ice on these shuttle parts. The discovery of ice is critical to the operational safety of the shuttle as ice has been detected during all launches despite air temperatures above freezing.

On May 2, 1990, the contracting officer received a purchase request from NASA's technical manager for the eight Inframetrics Model 700 thermal imagers. After review of its needs, NASA determined to follow the procedures required by 10 U.S.C. § 2304(f) (1988) for use of other than competitive procedures. On May 4, NASA executed a written justification for the procurement of the equipment on a sole-source basis which was approved by the appropriate higher-level authority. The justification and approval (J&A) cited the authority of 10 U.S.C. § 2304(c) (1), which permits a noncompetitive award where only one known responsible source or a limited number of responsible sources are available, and no other type of property or services will satisfy the needs of the agency.

The J&A states that NASA's primary reason for negotiating with Inframetrics was the necessity to maintain operational compatibility with the other equipment installed as part of the STI system at KSC. NASA previously had acquired from Inframetrics six operational Model 600 thermal imagers, the image analysis computers, and the consoles which control the imagers on the launch pads. The J&A states that the Inframetrics thermal imagers use a unique method of encoding imager status in the video monitor, and compatibility with this method of encoding is imperative. The J&A also states that this procurement for eight Inframetrics Model 700 thermal imagers will further expand and upgrade the STI system at KSC, particularly in light of NASA's requirement for closed cycle cooled helium refrigerators which will more safely and efficiently eliminate high pressure nitrogen gas components in the STI system. Because the Inframetrics Model 600 thermal imagers currently could not be retrofitted to include closed cycle cooling, and after reviewing information available on other thermal imagers, NASA concluded that the Inframetrics Model 700 thermal imager was the most state-of-the-art equipment available which would maintain operational



compatibility with the other components of the STI system at KSC. Therefore, NASA determined the Inframetrics Model 700 thermal imagers were essential to the critical mission of NASA and stated that if thermal imagers other than the Inframetrics Model 700 were acquired, the other components of the STI system would require redesigning and retrofitting at considerable expense. NASA contemplated completion of this phase one effort of the Shuttle Ice Detection System project in fiscal year 1991.

On May 18, NASA published in the Commerce Business Daily (CBD) a notice of its intention to procure eight Inframetrics Model 700 thermal imagers and required accessory equipment<sup>1/</sup> from Inframetrics through the use of other than full and open competition procedures pursuant to Federal Acquisition Regulation § 6.302-1. The CBD notice also stated that although NASA anticipated negotiating a sole-source award with Inframetrics, the only known responsible source of the required equipment, any other firms desiring consideration should identify their interest to NASA by submitting descriptive literature of their offered product within 45 days of the publication of the CBD notice.

By letter dated June 7, AGEMA submitted descriptive literature for its Thermovision 800 Series of thermal imagers, specifically Model 880LWB. By letter dated June 27, NASA informed AGEMA that the equipment it offered would not satisfy NASA's requirements. NASA stated that AGEMA's descriptive literature failed to indicate that AGEMA could supply thermal imagers equipped with closed cycle cooling, a requirement specifically listed in the CBD notice.

The solicitation was issued on June 29 to Inframetrics which submitted a proposal by the July 30 closing date for receipt of proposals. By letter dated July 18, AGEMA filed an agency-level protest, challenging NASA's decision to procure the Inframetrics Model 700 thermal imagers on a noncompetitive basis from Inframetrics. AGEMA also admitted in its agency-level protest that it did not include information in its descriptive literature submitted to NASA concerning its ability to supply closed cycle cooling on its thermal imager. AGEMA stated, however, that it believed this should not have

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<sup>1/</sup> Each thermal imager, as stated in the CBD notice, was required to include: closed cycle cooled helium refrigerator, real-time image averaging with freeze frame, remotely controlled filter mechanism, and 8-12 micron band pass filter. NASA also required an additional calibration disk, a quantity of 5-3x telescopic lense, a quantity of 1-10x telescopic lens, and a quantity of 4 ungraded image processing boards with version 3.0 software, Inframetrics part number 05784-001.



been a basis for NASA to reject the firm as a potential supplier, especially since AGEMA was now informing NASA that it had selected a vendor to equip its Model 880LWB thermal imager with closed cycle cooling.

Subsequent to the filing of the agency-level protest, NASA had discussions with AGEMA and requested that it provide any additional descriptive literature for its proposed equipment. AGEMA submitted no additional descriptive literature to NASA. By letter dated August 7, and received by AGEMA on August 16, NASA denied AGEMA's agency-level protest based on five technical deficiencies in AGEMA's Model 880LWB thermal imager, including failure to have continuously variable zoom capability for live, real-time imagery and general failure of AGEMA's Model 880LWB thermal imager to be operationally compatible with housings (pan/tilt units onto which the thermal imagers are placed) which were designed and engineered at KSC for Inframetrics thermal imagers. AGEMA filed this protest on August 29.


Although AGEMA contends that NASA's decision to conduct a sole-source procurement with Inframetrics was unreasonable, the record shows that NASA properly reviewed and evaluated the descriptive literature submitted by AGEMA for its Model 880LWB thermal imager in response to the CBD notice and reasonably concluded that the protester failed to establish its capability as a source for this requirement. AGEMA's descriptive literature for the Model 880LWB thermal imager did not evidence continuously variable zoom capability for live, real-time imagery, a requirement specifically listed in the CBD notice. AGEMA states that it offers a zoom capability on the image processing computer. NASA's requirement is for zoom capability for live imagery on the thermal imager scanner, not zoom capability during image processing on a separate computer. NASA explains that live imagery will allow closer inspection of the launch area to detect the presence of ice in the "no ice" areas or the failure of the heaters on the solid rocket boosters. NASA states that zoom capability in the image processing computer does not satisfy its live imagery requirement which is based on its detection needs.

In its post-conference comments, AGEMA states that it is developing a new prototype thermal imager, the Model 900 Series, which will be in production in early 1991. AGEMA claims that the Model 900 thermal imager will meet NASA's zoom imaging capability requirement. AGEMA states that there is no descriptive literature on its Model 900 thermal imager to verify the model's features. Thus, by AGEMA's own admission, it has no current equipment which can meet NASA's zoom imaging capability requirement at this time.



Since it is clear that AGEMA currently does not have equipment which meets NASA's needs, we find that NASA reasonably concluded that AGEMA was not an available source capable of satisfying NASA's requirements for thermal imagers at KSC, and that the proposed sole-source award to Inframetrics is proper.

Accordingly, the protest is denied.

  
for James F. Hinchman  
General Counsel